



General Assembly

January Session, 2001

Committee Bill No. 5912

LCO No. 3165

Referred to Committee on General Law

Introduced by:
(GL)

AN ACT ESTABLISHING A LEMON LAW FOR NEW BOATS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) As used in sections 1 to 10, inclusive, of this act:
2 (1) "Consumer" means the purchaser, other than for purposes of resale,
3 of a boat, a lessee of a boat, any person to whom such boat is
4 transferred during the duration of an express warranty applicable to
5 such boat and any person entitled by the terms of such warranty to
6 enforce the obligations of the warranty; and (2) "boat" means a
7 passenger boat or motor, a passenger and commercial boat or motor
8 that is sold or leased in this state.

9 (b) If a new boat does not conform to all applicable express
10 warranties, and the consumer reports the nonconformity to the
11 manufacturer, its agent or its dealer during the period of two years
12 following the date of original delivery of the boat to a consumer the
13 manufacturer, its agent or dealer shall make such repairs as are
14 necessary to conform the boat to such express warranties,
15 notwithstanding the fact that such repairs are made after the
16 expiration of the applicable period.

17 (c) No consumer shall be required to notify the manufacturer of a
18 claim under this section and sections 5 to 8, inclusive, of this act, unless
19 the manufacturer has clearly and conspicuously disclosed to the
20 consumer, in the warranty or owner's manual, that written notification
21 of the nonconformity is required before the consumer may be eligible
22 for a refund or replacement of the boat. The manufacturer shall include
23 with the warranty or owner's manual the name and address to which
24 the consumer shall send such written notification.

25 (d) If the manufacturer or its agents or dealers are unable to
26 conform the boat to any applicable express warranty by repairing or
27 correcting any defect or condition which substantially impairs the use,
28 safety or value of the boat to the consumer after a reasonable number
29 of attempts, the manufacturer shall replace the boat with a new boat
30 acceptable to the consumer, or accept return of the boat from the
31 consumer and refund to the consumer, lessor and lienholder, if any, as
32 their interests may appear, the following: (1) The full contract price,
33 including, but not limited to, dealer preparation and transportation
34 and installed options, (2) all collateral charges, including, but not
35 limited to, sales tax, license and registration fees and similar
36 government charges, (3) all finance charges incurred by the consumer
37 after the consumer first reports the nonconformity to the
38 manufacturer, agent or dealer and during any subsequent period when
39 the boat is out of service by reason of repair, and (4) all incidental
40 damages, as defined in section 42a-2-715 of the general statutes, less a
41 reasonable allowance for the consumer's use of the boat. No dealer
42 shall be held liable by the manufacturer for any refunds or boat
43 replacements in the absence of evidence indicating that dealer repairs
44 have been carried out in a manner inconsistent with the manufacturers'
45 instructions. Refunds or replacements shall be made to the consumer,
46 lessor and lienholder, if any, as their interests may appear. It shall be
47 an affirmative defense to any claim under this section (A) that an
48 alleged nonconformity does not substantially impair such use, safety
49 or value, or (B) that a nonconformity is the result of abuse, neglect or
50 unauthorized modifications or alterations of a boat by a consumer.

51 (e) It shall be presumed that a reasonable number of attempts have
52 been undertaken to conform a boat to the applicable express
53 warranties, if (1) the same nonconformity has been subject to repair
54 four or more times by the manufacturer or its agents or dealers during
55 the period of two years following the date of original delivery of the
56 boat to a consumer but such nonconformity continues to exist, or (2)
57 the boat is out of service by reason of repair for a cumulative total of
58 thirty or more calendar days during the applicable period, determined
59 pursuant to subdivision (1) of this subsection. Such two-year period
60 and such thirty-day period shall be extended by any period of time
61 during which repair services are not available to the consumer because
62 of a war, invasion, strike or fire, flood or other natural disaster. No
63 claim shall be made under this section unless at least one attempt to
64 repair a nonconformity has been made by the manufacturer or its
65 agent or a dealer or unless such manufacturer, its agent or a dealer has
66 refused to attempt to repair such nonconformity.

67 (f) If a boat has a nonconformity which results in a condition which
68 is likely to cause death or serious bodily injury if the boat is used, it
69 shall be presumed that a reasonable number of attempts have been
70 undertaken to conform such boat to the applicable express warranties
71 if the nonconformity has been subject to repair at least twice by the
72 manufacturer or its agents or dealers within the express warranty term
73 or during the period of one year following the date of the original
74 delivery of the boat to a consumer, whichever period ends first, but
75 such nonconformity continues to exist. The term of an express
76 warranty and such one-year period shall be extended by any period of
77 time during which repair services are not available to the consumer
78 because of war, invasion, strike or fire, flood or other natural disaster.

79 (g) (1) No boat which is returned to any person pursuant to any
80 provision of this act or in settlement of any dispute related to any
81 complaint made under the provisions of this act and which requires
82 replacement or refund shall be resold, transferred or leased in the state
83 without clear and conspicuous written disclosure of the fact that such

84 boat was so returned prior to resale or lease. Such disclosure shall be
85 affixed to the boat and shall be included in any contract for sale or
86 lease. The Commissioner of Consumer Protection shall, by regulations
87 adopted in accordance with the provisions of chapter 54 of the general
88 statutes, prescribe the form and content of any such disclosure
89 statement and establish provisions by which the commissioner may
90 remove such written disclosure after such time as the commissioner
91 may determine that such boat is no longer defective. (2) If a
92 manufacturer accepts the return of a boat from a consumer due to a
93 nonconformity or defect, in exchange for a refund or a replacement
94 boat, whether as a result of an administrative or judicial determination,
95 an arbitration proceeding or a voluntary settlement, the manufacturer
96 shall notify the department and shall provide the department with all
97 relevant information, including the year, make, model, and
98 identification number of the boat. The commissioner shall adopt
99 regulations, in accordance with chapter 54 of the general statutes,
100 specifying the format and time period in which such information shall
101 be provided and the nature of any additional information which the
102 commissioner may require.

103 (h) All express and implied warranties arising from the sale of a
104 new boat shall be subject to the provisions of part 3 of article 2 of title
105 42a of the general statutes.

106 (i) Nothing in this section shall in any way limit the rights or
107 remedies which are otherwise available to a consumer under any other
108 law.

109 (j) If a manufacturer has established an informal dispute settlement
110 procedure which is certified by the Attorney General as complying in
111 all respects with the provisions of subsection (b) of section 6 of this act,
112 the provisions of subsection (d) of this section concerning refunds or
113 replacement shall not apply to any consumer who has not first
114 resorted to such procedure.

115 Sec. 2. (NEW) A dealer or agent of a manufacturer shall, upon the

116 request of a consumer, provide such consumer with copies of any
117 paperwork or invoices related to repair work performed on such
118 consumer's boat in accordance with the provisions of subsection (b) of
119 section 1 of this act. Any person who violates the provisions of this
120 section shall be guilty of an infraction.

121 Sec. 3. (NEW) Each boat dealer and each person engaged in the
122 business of leasing new boats shall, at the time of sale or execution of
123 the lease of any new boat, deliver to the consumer, as defined in
124 subdivision (1) of subsection (a) of section 1 of this act, written
125 information, in a form approved by the Commissioner of Consumer
126 Protection, that explains the new boat warranty and dispute settlement
127 program established pursuant to this act.

128 Sec. 4. (NEW) In any action by a consumer against the manufacturer
129 of a boat, or the manufacturer's agent or dealer, based upon the alleged
130 breach of an express or implied warranty made in connection with the
131 sale or lease of such boat, the court, in its discretion, may award to the
132 plaintiff his costs and reasonable attorney's fees or, if the court
133 determines that the action was brought without any substantial
134 justification, may award costs and reasonable attorney's fees to the
135 defendant.

136 Sec. 5. (NEW) (a) The Department of Consumer Protection shall
137 provide an independent arbitration procedure for the settlement of
138 disputes between consumers and manufacturers of boats which do not
139 conform to all applicable warranties under the terms of section 1 of this
140 act. The Commissioner of Consumer Protection shall establish one or
141 more boat dispute settlement panels that shall consist of three
142 members appointed by the commissioner, only one of whom may be
143 directly involved in the manufacture, distribution, sale or service of
144 any product. Members shall be persons interested in consumer
145 disputes and shall serve without compensation for terms of two years
146 at the discretion of the commissioner. In lieu of referring an arbitration
147 dispute to a panel established under the provisions of this section, the

148 department may refer an arbitration dispute to the American
149 Arbitration Association in accordance with regulations adopted in
150 accordance with the provisions of chapter 54 of the general statutes.

151 (b) If any boat purchased or leased at any time on or after October 1,
152 2001, fails to conform to such applicable warranties, as defined in
153 section 1 of this act, a consumer may bring a grievance to an arbitration
154 panel if the manufacturer of the boat has not established an informal
155 dispute settlement procedure which the Attorney General has certified
156 as complying in all respects with the requirements of section 1 of this
157 act. The consumer may initiate a request for arbitration by calling a
158 toll-free telephone number designated by the commissioner or by
159 requesting an arbitration hearing in writing. The consumer shall file,
160 on forms prescribed by the commissioner, any information deemed
161 relevant to the resolution of the dispute and shall return the form
162 accompanied by a filing fee of fifty dollars. Such complaint form shall
163 offer the consumer a choice of presenting any subsequent testimony
164 orally or in writing. Prior to submitting the complaint to an arbitration
165 panel, the department shall conduct an initial review of the complaint.
166 The department shall determine whether the complaint should be
167 accepted or rejected for arbitration based on whether it alleges that the
168 manufacturer has failed to comply with section 1 of this act. The filing
169 fee shall be refunded if the department determines that a complaint
170 does not allege a violation of any applicable warranty under the
171 requirements of section 1 of this act. Upon acceptance of the complaint,
172 the commissioner shall notify the manufacturer of the filing of a
173 request for arbitration and shall obtain from the manufacturer, in
174 writing, on a form prescribed by the commissioner, any information
175 deemed relevant to the resolution of the dispute. The manufacturer
176 shall return the form within fifteen days of receipt, together with a
177 filing fee of two hundred fifty dollars. A lessee who brings a grievance
178 to an arbitration panel under this section shall, upon filing the
179 complaint form provided for in this section, provide the lessor with
180 notice by registered or certified mail, return receipt requested, and the
181 lessor may petition the arbitration panel to be made a party to the

182 arbitration proceedings. Initial determinations to reject a complaint for
183 arbitration shall be submitted to an arbitration panel for a final
184 decision upon receipt of a written request from the consumer for a
185 review of the initial eligibility determination and a filing fee of fifty
186 dollars. If a complaint is accepted for arbitration, an arbitration panel
187 may determine that a complaint does not allege that the manufacturer
188 has failed to comply with section 1 of this act at any time before such
189 panel renders its decision on the merits of the dispute. The fee
190 accompanying the consumer's complaint form shall be refunded to the
191 consumer and the fee accompanying the form filed by the
192 manufacturer shall be refunded to the manufacturer if the arbitration
193 panel determines that a complaint does not allege a violation of the
194 provisions of section 1 of this act.

195 (c) The department shall investigate, gather and organize all
196 information necessary for a fair and timely decision in each dispute.
197 The commissioner may issue subpoenas on behalf of any arbitration
198 panel to compel the attendance of witnesses and the production of
199 documents, papers and records relevant to the dispute. The
200 department shall forward a copy of all written testimony, including all
201 documentary evidence, to an independent technical expert having a
202 degree or other credentials from a nationally recognized organization
203 or institution attesting to boat building and repair expertise, who shall
204 review such material and be available to advise and consult with the
205 arbitration panel. An expert shall sit as a nonvoting member of an
206 arbitration panel whenever oral testimony is presented. An arbitration
207 panel shall, as expeditiously as possible, but not later than sixty days
208 after the time the consumer files the complaint form together with the
209 filing fee, render a fair decision based on the information gathered and
210 disclose its findings and the reasons therefor to the parties involved.
211 The failure of the arbitrators to render a decision within sixty days
212 shall not void any subsequent decision or otherwise limit the powers
213 of the arbitrators. The arbitration panel shall base its determination of
214 liability solely on whether the manufacturer has failed to comply with
215 section 1 of this act. The arbitration decision shall be final and binding

216 as to the rights of the parties pursuant to section 1 of this act, subject
217 only to judicial review as set forth in this subsection. The decision shall
218 provide appropriate remedies, including, but not limited to, one or
219 more of the following:

220 (1) Replacement of the boat with an identical or comparable new
221 boat acceptable to the consumer;

222 (2) Refund of the full contract price, plus collateral charges as
223 specified in subsection (d) of section 1 of this act;

224 (3) Reimbursement for expenses and compensation for incidental
225 damages as specified in subsection (d) of section 1 of this act;

226 (4) Any other remedies available under the applicable warranties,
227 section 1 of this act, this section and sections 6 to 8, inclusive, of this act
228 other than repair of the boat. The decision shall specify a date for
229 performance and completion of all awarded remedies.
230 Notwithstanding any provision of the general statutes or any
231 regulation, the department shall not amend, reverse, rescind or revoke
232 any decision or action of an arbitration panel. The department shall
233 contact the consumer, within ten working days after the date for
234 performance, to determine whether performance has occurred. The
235 manufacturer shall act in good faith in abiding by any arbitration
236 decision. In addition, either party to the arbitration may make
237 application to the Superior Court for the judicial district in which one
238 of the parties resides or, when the court is not in session, any judge
239 thereof for an order confirming, vacating, modifying or correcting any
240 award, in accordance with the provisions of this section and sections
241 52-417, 52-418, 52-419 and 52-420 of the general statutes. Upon filing
242 such application the moving party shall mail a copy of the application
243 to the Attorney General and, upon entry of any judgment or decree,
244 shall mail a copy of such judgment or decree to the Attorney General.
245 A review of such application shall be confined to the record of the
246 proceedings before the arbitration panel. The court shall conduct a de
247 novo review of the questions of law raised in the application. In

248 addition to the grounds set forth in sections 52-418 and 52-419 of the
249 general statutes, the court shall consider questions of fact raised in the
250 application. In reviewing questions of fact, the court shall uphold the
251 award unless it determines that the factual findings of the arbitrators
252 are not supported by substantial evidence in the record and that the
253 substantial rights of the moving party have been prejudiced. If the
254 arbitrators fail to state findings or reasons for the award, or the stated
255 findings or reasons are inadequate, the court shall search the record to
256 determine whether a basis exists to uphold the award. If it is
257 determined by the court that the manufacturer has acted without good
258 cause in bringing an appeal of an award, the court, in its discretion,
259 may grant to the consumer costs and reasonable attorney's fees. If the
260 manufacturer fails to perform all awarded remedies by the date for
261 performance specified by the arbitrators, and the enforcement of the
262 award has not been stayed pursuant to subsection (c) of section 52-420
263 of the general statutes, then each additional day the manufacturer
264 wilfully fails to comply shall be deemed a separate violation for
265 purposes of section 8 of this act.

266 (d) The department shall maintain such records of each dispute as
267 the commissioner may require, including an index of disputes by
268 brand name and model. The department shall annually compile and
269 maintain statistics indicating the record of manufacturer compliance
270 with arbitration decisions and the number of refunds or replacements
271 awarded. A copy of the statistical summary shall be filed with the
272 commissioner. The summary shall be a public record.

273 (e) If a manufacturer has not established an informal dispute
274 settlement procedure certified by the Attorney General as complying
275 with the requirements of section 1 of this act, public notice of the
276 availability of the department's boat dispute settlement procedure
277 shall be prominently posted in the place of business of each new boat
278 dealer. The Commissioner of Consumer Protection shall determine the
279 size, type face, form and wording of the sign required by this section,
280 which shall include the toll-free telephone number and the address to

281 which requests for the department's arbitration services may be sent.

282 (f) Any consumer injured by the operation of any procedure which
283 does not conform with procedures established by a manufacturer
284 pursuant to subsection (b) of section 6 of this act may appeal any
285 decision rendered as the result of such a procedure by requesting
286 arbitration de novo of the dispute by an arbitration panel. Filing
287 procedures and fees for appeals shall be the same as those required in
288 subsection (b) of this section. The findings of the manufacturer's
289 informal dispute settlement procedure may be admissible in evidence
290 at such arbitration panel hearing and in any civil action subsequently
291 arising out of any warranty obligation or matter related to the dispute.
292 Any consumer so injured may, in addition, request the Attorney
293 General to investigate the manufacturer's procedure to determine
294 whether its certification shall be suspended or revoked after proper
295 notice and hearing. The Attorney General shall establish procedures
296 for processing such consumer complaints and maintain a record of the
297 disposition of such complaints, which record shall be included in the
298 annual report prepared in accordance with the provisions of
299 subsection (a) of section 6 of this act.

300 (g) The Commissioner of Consumer Protection shall adopt
301 regulations, in accordance with the provisions of chapter 54 of the
302 general statutes, to carry out the purposes of this section. Written
303 copies of the regulations and appropriate arbitration hearing
304 procedures shall be provided to any person upon request.

305 Sec. 6. (NEW) (a) The Attorney General shall prepare an annual
306 report evaluating the operation of informal dispute settlement
307 procedures established by manufacturers of new boats and shall issue
308 a certificate of approval to those manufacturers whose settlement
309 procedures comply with the provisions of subsection (b) of this section.
310 The report and certification shall be public records. The Attorney
311 General or an agent authorized by the Attorney General may conduct
312 any inquiry or investigation in connection with the certification or

313 evaluation of a manufacturer's informal dispute settlement procedure
314 and may hold hearings, issue subpoenas requiring the attendance of
315 witnesses and the production of records, documents or other evidence
316 in connection therewith, administer oaths, examine witnesses, receive
317 oral and documentary evidence and issue written interrogatories
318 prescribing a return date which would allow a reasonable time to
319 respond, which responses shall be under oath. Service of subpoenas
320 compelling testimony or the production of documents and written
321 interrogatories as provided herein, may be made by (1) personal
322 service or service at the usual place of abode; or (2) registered or
323 certified mail, return receipt requested, a duly executed copy of which
324 shall be addressed to the person to be served at such person's principal
325 place of business in this state, or, if such person has no principal place
326 of business in this state, to such person's principal office or to such
327 person's residence. In the event that any person fails to comply with a
328 subpoena or with interrogatories issued pursuant to this section, the
329 Attorney General or an agent authorized by the Attorney General may
330 apply to the superior court for the judicial district of Hartford for
331 compliance, which court may, upon notice to such person, issue an
332 order requiring such compliance, which shall be served upon such
333 person. Hearings under this subsection shall be held in the manner
334 provided for contested cases under sections 4-176e to 4-181a, inclusive,
335 of the general statutes, except that no informal disposition may be
336 made by stipulation, agreed settlement, consent order or default, in
337 any proceeding concerning the certification of a boat manufacturer's
338 informal dispute settlement procedure unless such proceeding is open
339 to the public in accordance with the provisions of section 1-225 of the
340 general statutes. The Attorney General, after notice and hearing, may
341 suspend or revoke the certification of a boat manufacturer's informal
342 dispute settlement procedure which violates the provisions of
343 subsection (b) of this section. Any person aggrieved by a decision of
344 the Attorney General or the Attorney General's authorized agent, may
345 appeal in accordance with the provisions of sections 4-183 and 4-184 of
346 the general statutes. Section 4-184a of the general statutes shall be

347 applicable to such appeals. Hearings, meetings and conferences, except
348 telephone conversations, relating to evaluation and certification shall
349 be open to the public in accordance with the provisions of section 1-225
350 of the general statutes. If the Attorney General certifies a
351 manufacturer's informal dispute settlement procedure, the provisions
352 of subsection (d) of section 1 of this act concerning refunds or
353 replacement shall not apply to any consumer who has not first
354 resorted to such procedure. A copy of the Attorney General's report
355 and certification shall be forwarded by the Attorney General to the
356 Commissioner of Consumer Protection

357 (b) A manufacturer's informal dispute procedure shall not include
358 any practices that: (1) Delay a decision in any dispute beyond sixty
359 days after the date on which the consumer initially resorts to the
360 informal dispute settlement procedure either by a telephone call or by
361 written notification that a dispute exists; (2) delay performance of
362 remedies awarded in a settlement beyond ten days after receipt of
363 notice of the consumer's acceptance of the decision, except that a
364 manufacturer may have thirty days following the date of such receipt
365 to deliver a replacement of a boat acceptable to the consumer or to
366 refund the full contract price of the boat together with all collateral
367 charges, and all consequential and incidental damages, as defined in
368 section 1 of this act; (3) require the consumer to make the boat
369 available more than once for inspection by a manufacturer's
370 representative, and more than once for repair of the same defect by a
371 dealer, in which cases, the manufacturer of the defective boat shall
372 provide for the loan of a reliable boat, not more than two years old, for
373 use during the periods required for inspection or repair; (4) fail to
374 consider in decisions any remedies provided by sections 1, 5, 7 and 8 of
375 this act, such remedies to include (A) repair, replacement and refund,
376 (B) reimbursement for expenses and collateral charges, (C)
377 compensation for consequential and incidental damages, as defined in
378 section 1 of this act, and (D) any other remedies available under
379 applicable express or implied warranties; or (5) fail to conform to all
380 applicable standards and requirements of this act in the processing of

381 consumer complaints.

382 (c) Any manufacturer operating or participating in an informal
383 dispute settlement procedure for resolving disputes with consumers in
384 this state shall be required to maintain records that indicate the
385 number of: (1) Boats sold in this state during the reporting period; (2)
386 telephone and written requests from consumers to enter the dispute
387 resolution program; (3) requests rejected as ineligible for the program;
388 (4) requests accepted for resolution by the program; (5) cases in which
389 a decision was reached and the manufacturer has complied with the
390 decision within the time period for compliance established by the
391 decision; (6) cases in which a decision was reached and the
392 manufacturer's compliance occurred after the expiration of the time
393 period for compliance established by the decision; (7) cases in which a
394 decision was reached, the time period for compliance has expired and
395 the manufacturer has not complied with such decision; (8) cases in
396 which a decision was reached and the time period for compliance has
397 not yet expired; (9) cases in which a decision awarded no relief to the
398 consumer; (10) cases in which a decision awarded the consumer
399 further repair or extended warranty; (11) cases in which a decision
400 required the manufacturer to accept the return of the boat and a refund
401 was issued to the consumer; (12) cases in which a decision required the
402 manufacturer to accept the return of the boat and a replacement boat
403 was provided to the consumer; (13) cases in which a decision is
404 pending; (14) cases in which the consumer accepted the decision; (15)
405 cases in which the consumer rejected the decision; and (16) cases
406 resolved by predecision settlement.

407 Sec. 7. (NEW) The Commissioner of Consumer Protection may
408 request institution of proceedings against any manufacturer found to
409 have failed to comply with the provisions of sections 1, 5, 6 and 8 of
410 this act.

411 Sec. 8. (NEW) A violation of any of the provisions of sections 1 and
412 5 to 7, inclusive, of this act, shall be deemed an unfair or deceptive

413 trade practice under subsection (a) of section 42-110b of the general
414 statutes.

415 Sec. 9. (NEW) Notwithstanding the provisions of any general
416 statute, regulation or grant of authority, no filing fee or statement
417 required under the provisions of this act shall be waived, refunded,
418 reduced or withheld from use, by the state pursuant to any contract,
419 stipulated settlement, consent order, administrative directive or by any
420 other means except as provided in this act or by order of a court of
421 competent jurisdiction made upon proof of economic hardship and a
422 finding that such settlement, consent order, directive or other action is
423 in the public interest.

424 Sec. 10. (NEW) In any action by a consumer who is a lessee against
425 the manufacturer of a boat, or the manufacturer's agent or dealer,
426 based upon the alleged breach of an express or implied warranty made
427 in connection with the lease of such boat pursuant to section 1 of this
428 act, the lessee shall, at the time of the service of process upon such
429 manufacturer, manufacturer's agent or dealer, notify the lessor of such
430 boat of such action by registered or certified mail, return receipt
431 requested, and such lessor may petition the court to be made a party to
432 the proceedings.

Statement of Purpose:

To expand the state Lemon Law to include boats in order to give boat owners the opportunity to have their money refunded if the purchased boat does not meet performance standards.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. RYAN, 139th Dist.